694.

SUPREME COURT OF THE UNITED STATES.

No. 101.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

ONE PACKAGE MERCHANDISE, LION, PINSARD & CO., CLAIMANTS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Order granting writ of error	1	1
Writ of error	2	1
Transcript from United States district court	3	2
Information of U. S. attorney	3	2
Attachment and monition	5	4
Marshal's return	6	4
Claim of Pinsard & Co	6	5
Answer	6	5
Trial of issue and verdict	7	6
Final judgment	8	6
Certificate authenticating transcript from district court	8	7
Assignment of errors by U. S. attorney	9	7
Citation in error and marshal's return	10	7,8
Submission of the cause in the circuit court	10	8
Final decree by U. S. circuit court	11	8
Petition for writ of error	12	9
Order granting same	12	9
Certificates authenticating this transcript	13	9
Writ of error	14	11
Citation and service	16	11

GIDEON, Print.

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

A transcript of the record and proceedings in the case of the United States vs. One package of Merchandise, Lion, Pinsard & Co., claimants.—No. 2,233 of the docket.

Order granting writ of error made by the court (and duly entered of record in the minutes) on the 8th day of March, A. D. 1853.

THE UNITED STATES
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants. } No. 2,233.

On motion of L. Hunton, United States district attorney, and on representing that judgment has been rendered herein against the plaintiffs by the honorable the district court of the United States for the eastern district of Louisiana, whereby they feel aggrieved, and are desirous of having the proceedings therein reviewed by this court; it is ordered that said plaintiffs be allowed a writ of error, returnable to the April term, 1853, of this court.

Writ of error.

UNITED STATES OF AMERICA.

The President of the United States, to the honorable the judge of the district court of the United States, for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between the United States and One package Merchandise, whereof Lion, Pinsard & Co. are claimants, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, for the eastern district of Louisiana, together with this writ, so that you have the same at New Orleans on the fourth Monday of April next, in the said circuit court, to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

[REC. CI, D. T., 1853.]—1

Witness the Hon. R. B. Taney, chief justice of the Supreme Court of the United States, at New Orleans, this ninth March, 1853.

J. W. GURLEY,
Clerk of the United States circuit court for the eastern dist. of La.

Transcript

Of the record and proceedings from the United States district court for the eastern district of Louisiana.—Filed in the clerk's office of the circuit court of the United States, 5th circuit and eastern district of La., 25th April, 1853.

UNITED STATES OF AMERICA,
Eastern district of Louisiana.

District court of the United States, for the eastern district, La.

UNITED STATES
versus
ONE PACKAGE MERCHANDISE, marked (L., P. & Co., ‡ 48.) } No. 6,817.

Information.—(July 26th, 1852.)

To the Hon. Theodore H. McCaleb, judge of the district court of the United States, for the eastern district of Louisiana.

Be it remembered, that on this twenty-sixth day of July, in the year eighteen hundred and fifty-two, before the honorable judge aforesaid, comes Logan Hunton, attorney of the United States, and on behalf, as well of the United States as of George C. Lawrason, esq., collector of the port of New Orleans, propounds and gives the said judge to understand and be informed, that at New Orleans, in the district aforesaid, the said collector hath seized the following goods, wares, and merchandise, to wit: one package (marked L., P. & Co.) ‡ 48, containing medicines, blank books, &c., and hath the same in his custody as being forfeited to the United States, for the causes hereinafter mentioned, to wit: 1st. That the said goods, wares, and merchandise are of the growth, produce, and manufacture of some foreign country, and were heretofore, to wit, on the thirteenth day of July, in the year eighteen hundred and fifty-two, brought or imported in the ship "Niagara," from a foreign port, to wit, the port of Havre, to the port of New Orleans, in the district aforesaid; which said goods, wares, and merchandise are subject to the payment of duties to the United States on being brought and imported as aforesaid. That an entry of the said goods, wares, and merchandise, duly signed, was, at the time of said importation, made at the office of the collector aforesaid; and that, on such entry being made as aforesaid, an invoice of the said goods, wares, and merchandise included in such entry was produced and left with the said collector of the customs of said port and district; and the said attor-

ney further avers, that the aforesaid goods, wares, and merchandise which were so entered as aforesaid, and of which an invoice was so produced and left as aforesaid, were not invoiced according to the actual cost thereof at the place of exportation, but on the contrary were in fact invoiced at less sums than the actual cost thereof at the place of exportation, with design to evade the duties thereupon, or some part thereof, contrary to the form of the act of Congress in such case made and provided.

2. That the aforesaid goods, wares, and merchandise being subject to the payment of ad valorem duties to the United States, an entry thereof, duly signed, was, at the time of the importation thereof, made at the office of the collector of the customs of the said port and district of New Orleans; and that on such entry being made as aforesaid, an invoice of the goods, wares, and merchandise included therein was produced and left with the said collector of the customs. And the said attorney avers, that the said goods, wares, and merchandise which were so entered as aforesaid, and of which an invoice was so produced and left as aforesaid, were not invoiced according to the actual market value and wholesale price thereof at the time when purchased, in the principal markets of the country from which the same were imported into the United States, to wit—France; but, on the contrary, were in fact invoiced at less sums than the actual market value and wholesale price at the time of the purchase thereof in the principal markets of France, the country from which the said goods, wares, and merchandise were imported into the United States, with design to evade the duties thereupon, or some part thereof, contrary to the act of Congress in such case made and provided.

3. That the said goods, wares, and merchandise being subject to the paytnent of ad valorem duties to the United States, an entry thereof, duly signed, was, at the time of the importation thereof, made at the office of the collector of the customs of said port of New Orleans; and that on such entry being made, an invoice of the goods, wares, and merchandise included in such entry was produced and left with the said collector. And the said attorney avers, that the said invoice so produced and left as aforesaid was made up with intent, by a false valuation, to evade and defraud the revenue of the United States, contrary to the form of the act of Congress in such case made and provided. Whereby and by reason of the premises and the acts of Congress in this behalf made and provided, the said goods, wares, and merchandise have become and are forfeited.

Wherefore the said attorney prays the advisement of this honorable court in the premises, and for monition and other proper process, to the end that the said goods, wares, and merchandise may, by the definitive sentence and decree of this court, be condemned to be and remain forfeited to the United States.

(Signed) LOGAN HUNTON,
U. S. attorney.

Nota.—Judge being absent, process ordered out by
ROB'T M. LUSHER,
D'y clerk.

THE UNITED STATES
vs.
ONE PACKAGE MERCHANDISE,
(marked L., P. & Co. ‡ 48.) } No. 6,817.

Warrant of attachment and monition.—(July 26th, 1852.)

The President of the United States of America, to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the one package of merchandise, marked (L., P. & Co ,) ‡ 48, containing medicines, blank books, &c., lately imported from Havre, on the ship "Niagara," and seized by Geo. C. Lawrason, esq., collector of the customs, and now libeled by the United States of America for causes and reasons set forth in the libel of record (undervaluation, false invoice, fraudulent intent, &c.,) in the district court of the United States, for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said One package of Merchandise, (L., P. & Co.,) ‡ 48, as aforesaid, should not be condemned as forfeited to the United States, and be sold agreeably to the prayer of the libellants; and how you have executed this warrant, that you make return according to law.

Witness the honorable Theodore H. McCaleb, judge of the said court, this 26th day of July, 1852, and the 77th year of the independence of the United States.
[SEAL.]

(Signed) ROB'T M. LUSHER,
D'y clerk.

Marshal's return.

Received July 26th, 1852, and on same day attached in the hands of Geo. C. Lawrason, collector, one package merchandise, marked (L., P. & Co.) ‡ 48; gave notice; published monition; and in all respects complied with the law and the commands of this warrant.

Sept. 1st. Ret'd into court.

CHAS. A. LABUGAN,
Deputy marshal.

(Signed) LUSHER, *Deputy clerk.*

Nota.—On the prayer of Lion, Pinsard & Co., claimants of the package so attached, the contents of the same (medicines, blank books)

were appraised at $147 00, Sept. 15th, 1852; but no further action having been had thereupon, it still remains in custody of the marshal.

UNITED STATES
vs.
ONE PACKAGE OF MERCHANDISE,
(L., P. & Co.) ‡ 48.
No. 6,817.

Claim of Lion Pinsard & Co.—(Aug. 7th, 1852.)

And now comes into court Isadore Pinsard, one of the firm of Lion, Pinsard & Co., of New Orleans, and on oath deposes that the sole, true, and bona fide owners of said package of merchandise, now in custody of the marshal, under the process issued in the above case, are the said Lion, Pinsard & Co., composed of Achille Lion, Isadore Pinsard, and Victor Hebert; and that he, deponent, one of the said firm, now claims the said merchandise on behalf of his said firm, and asks leave to bond the same on the conditions required by law.

LION, PINSARD & CO.
(Signed) I. PINSARD.

Sworn to and subscribed at New Orleans, this 7th August, 1852, before

(Signed) ROB'T M. LUSHER,
D'y clerk.

Answer.—(October 7th, 1852.)

G. Schmidt, proctor.

Lion, Pinsard & Co., claimants of the merchandise libeled in this suit, now come into court and aver, that they are true and sole owners of the aforesaid package, as per claim already filed. And for answer to the libel filed, they say that it is not true, as therein alleged, that said goods were entered and valued at a sum less than their actual cost, nor at a less value than the actual market value and wholesale price in the principal markets of the country whence they were imported into the United States; nor is it true, as in said libel alleged, that the invoice of said goods and the valuation was false, was made to evade and defraud the revenue of the United States. And these claimants and respondents, further answering said libel, say, that they deny, generally, all charges and allegations therein contained tending to charge them, or any one for them, with having violated the revenue laws of the United States, or that such laws were violated in relation to the package claimed to be forfeited in this case. And they further insist, that under the existing laws of the U. S. no ground of forfeiture has been set forth in said libel, which they pray may be dismissed and the property restored to them; and they further pray for a trial by jury and general relief.

(Signed) SCHMIDT,
Proctor of libellant.

Filed Oct. 7, 1852.

Proceedings—February term, 1853.

Friday, March 4th, 1853.—Present, Hon. Theo. H. McCaleb.

THE UNITED STATES
vs.
ONE PACKAGE OF MERCHANDISE, "L., P. & Co." } No. 6,817.

Trial of issue and verdict.

This cause came regularly up for hearing: L. Hunton, esqr., U. S. attorney, appearing for the libellants, and G. Schmidt, esqr., for Lion, Pinsard & Co., claimants. The following jurors were sworn and empanneled to try the issue, viz:

Jury.

1. R. C. Armistead; 2. B. P. Voorhies; 3rd. Alex'r Ward; 4. Jno. R. Brooks; 5. C. R. Harrison; 6. Wm. Cooper; 7. R. C. Cummings; 8. J. P. Coulon; 9. S. Howell; 10. Wm. Colby; 11. Rob't T. Weed; 12. C. R Watrous. The pleadings and statutes (66th sec. of the act of March 2, 1799; 4th of act of May 28th, 1830) having been read, and the nature of the cause explained, the attorney of the United States offered in evidence the original import entry, invoice, and appraisement taken from the files of the custom house, together with the oral testimony of Artemon Hill, U. S. appraiser, and Benjamin Levy, book merchant and stationer, and the appraisement made by order of court, Sept. 11th, 1852, when the claimants offering no evidence, the proofs in the case then closed. Argument was then addressed to the court and jury by L. Hunton, esqr., U. S. attorney; G. Schmidt, esqr., in rejoinder for the claimants, and the U. S. attorney in reply, when the claimants' proctor asked the court to charge the jury that there is no existing law authorizing the forfeiture of the goods seized herein; but the court declined, and submitted the question of fact alone to the jury, appointing Carter P. Harrison, foreman. Whereupon the jury forthwith rendered their verdict in the words and figures following: "We, the jury, find for the United States, March 4, 1853, C. R. Harrison, foreman; which verdict having been ordered to be recorded, Gustavus Schmidt, esqr., proctor for the claimants, asked for and obtained leave to move for an arrest of judgment herein, on the grounds to be filed.

Final judgment.

February term, 1853.

Monday, March 7th, 1853.—Present, Hon. T. H. McCaleb.

THE UNITED STATES
vs.
ONE PACKAGE OF MERCHANDISE, "L., P. & Co." } No. 6,817.

The court having considered the grounds this day filed and submit-

ted for an arrest of judgment herein, and being satisfied that it is correctly averred therein that there exists no law authorizing the forfeiture of the package seized in this case, it is now ordered, that on the verdict of the jury judgment be arrested, and that the information be dismissed. And it is further ordered, that reasonable cause of seizure be certified in this cause.

Signed 8th March, 1853.

THEO. H. McCALEB, [SEAL.]
U. S. judge.

UNITED STATES DISTRICT COURT,
Eastern district of Louisiana.

I, N. R. Jennings, clerk of the district court of the United States, for the said eastern district of Louisiana, do certify, that the foregoing ten folios is a true and correct transcript of the original record and proceedings in the case of the United States versus One package of Merchandise, Lion, Pinsard & Co., claimants, No. 6,817 of the docket of said district court.

In testimony whereof I have hereto set my hand and the seal of said court, at New Orleans, this 22d day of April, A. D. 1853.
[SEAL.]
N. R. JENNINGS, *clerk*,
By ROB'T M. LUSHER, *D'y clerk.*

Endorsement on the foregoing transcript as follows:

Assignment of errors.

And now comes the said United States, by their attorney, and say, that there is error in the within record and proceedings in this:

First. The court erred in arresting the judgment.

Second. The court erred in dismissing the information. Wherefore, &c.

Citation in error.—(Annexed to the foregoing transcript.)

The President of the United States of America, to Lion, Pinsard & Co., claimants of One package of Merchandise, marked (L., P. & Co.,) greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be holden at the city of New Orleans on the fourth Monday of April next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the eastern district of Louisiana, wherein the United States of America (alleging error in a final judgment of said court, arresting judgment on the verdict of the jury in favor of said United States) are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 28th day of March, in the [SEAL.] year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB,
U. S. Judge.

Marshal's return—(endorsed on the foregoing.)

Received March 28th, 1853, and on the 29th day of March, 1853, served a copy of citation in error personally on Gustavus Schmidt, in the city of New Orleans, and returned same day.

W. S. SCOTT, *U. S. M.*
By EMILE MARY, *D'y marshal.*

Proceedings in U. S. circuit court.—Extract from the minutes, May 4, 1853.

Cause submitted.

UNITED STATES, pl'ffs in error,
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants. } No. 2,233.

This cause was taken up for trial, and inasmuch as it involves the same questions as those in the case of the United States vs. 67 Packages of Dry Goods, this day argued, L. Hunton, esqr., on behalf of the pl'ffs in error, waived further argument. Whereupon, after argument by G. Schmidt, esqr., on part of claimants, the cause was submitted to the court and taken under advisement.

Final judgment.

And afterwards, to wit, on the 10th day of May, 1853, the court rendered a final judgment in this case, which was duly entered of record in the minutes; and on the 18th day of May, 1853, said final judgment was recorded in the judgment docket, and signed in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Fifth circuit and eastern district of Louisiana.

April term, A. D. 1853.

New Orleans, Tuesday, 10th of May, A. D. 1853.

Court met pursuant to adjournment.

Present, Hon. J. A. Campbell, presiding judge.
Absent, Hon. Theo. H. McCaleb, district judge.

THE UNITED STATES, pl'ffs in error,
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants. } No. 2,233.

This cause came on to be heard at this term of the court, on the

transcript of the record from the district court, and was argued by counsel; on consideration whereof it is ordered, adjudged, and decreed, that the judment of the district court be affirmed.

Judgment rendered 10th May, A. D. 1853.
" signed 18th May, A. D. 1853.

J. A. CAMPBELL, *Judge.*

Petition for writ of error.—(Filed 20th May, A. D. 1853.)

THE UNITED STATES, pl'ffs in error,
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants.

To the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana:

The plaintiffs herein, by their attorney, E. Warren Moise, respectfully represents, that they are informed and believe that there is error in the judgment rendered in the above entitled cause, to the injury of petitioners.

Wherefore said plaintiffs pray that a writ of error be allowed them, returnable to the next term of the Supreme Court United States.

E. WARREN MOISE,
U. S. attorney.

And on the 20th day of May, 1853, the following order was entered of record in the minutes:

THE UNITED STATES, plaintiffs in error,
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants.
No. 2,233.

On motion of E. W. Moise, esqr., U. S. attorney, and on presenting to the court a petition on behalf of the plaintiffs, praying a writ of error from the judgment herein rendered on the 18th instant, to the next term of the Supreme Court of the United States, it is ordered that the same be allowed.

UNITED STATES OF AMERICA,
Circuit Court of the United States:
Fifth circuit and eastern district of Louisiana.
Clerk's office.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 12 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of the United States, plaintiffs in error, vs. One package Merchandise, Lion, Pinsard & Co., claimants, No. 2,233 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of June, A. D. 1853.

[L. S.] J. W. GURLEY, *clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 10th day of June, A. D. 1853.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Writ of error.

THE UNITED STATES
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants. } No. 2,233.

Copy of writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, in pursuance of the statute in such cases made and provided, this day of

Attorney of plaintiff in error.

Filed 28th May, 1853.

J. W. GURLEY, *clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between the United States of America and One package Merchandise—Lion, Pinsard & Co., claimants—a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Su-

preme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 28th of May, in the year of our Lord one thousand eight hundred and fifty-three.

J. W. GURLEY,
Clerk of the United States circuit court for the eastern district of Louisiana.

Citation in error.

THE UNITED STATES
vs.
ONE PACKAGE MERCHANDISE, Lion, Pinsard & Co., claimants. } No. 2,233.

THE UNITED STATES OF AMERICA.

The President of the United States, to Lion, Pinsard & Co., claimants of one package merchandise, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-three.

J. A. CAMPBELL,
Associate Justice.

Marshal's return.

Received May 31st, 1853, and on the same day I served a copy of the within citation in error on Lion, Pinsard & Co., by handing the same to Pinsard, a member of the said firm, in person, in the city of New Orleans.

CH. DU ARMAS, *D'y m'l.*